IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-261

AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA, AFL-CIO,

AND

AMERICAN GUILD OF VARIETY ARTISTS, *Petitioners,*

v.

HARRAH'S CLUB, INC.,

AND

NATIONAL LABOR RELATIONS BOARD, *Respondents.*

REPLY OF PETITIONERS

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The responses to the Petition make clear that review is necessary. Thus, the Labor Board, whose views are entitled to great weight since it is charged with primary responsibility for the administration of the Act, urges in its Memorandum that the writ be granted. The Solicitor General, on the other hand, expresses the view that this Court might be unable to clarify "the

difficult line between lawful primary, and unlawful secondary, activity" by reason of the "somewhat unique" nature of labor-management relations in the entertainment industry. The Solicitor General does not dispute the Petitioners' contentions and the Board's apparent concurrence therein that the decision below (1) is in conflict with decisions of this Court and of other courts of appeals, (2) will have widespread, immediate and adverse impact upon the right to strike, and (3) interprets § 8(b)(4) in such a way as to bring it in collision with the First Amendment.

We agree with the Solicitor General that the line between lawful primary and unlawful secondary activity is a difficult one. But the drawing of that line ultimately rests with this Court and the very complexity of the issues involved here requires the decisive resolution that only this Court can provide. The need for review is accentuated when, as here, the questions decided by the lower court are of a type that constantly arise and the administrative agency vested with the obligation to answer those recurring questions considers the guidance of this Court necessary.

The stated reason for the Solicitor's disagreement with the Board as to the need for review is simply untenable since the unexplained "somewhat unique" nature of labor relations in the entertainment industry is irrelevant to the issues for which certiorari has been requested. Rather, as the Board's decision makes clear, the conduct declared unlawful by the court below is typical in labor-management relations without regard to the industry involved—a strike of an employer's establishment and an attempt to prevent alleged secondaries from entering his premises to aid him in the

conduct of his normal operations. Thus, in support of its decision that the conduct was lawful, the Board cited earlier cases involving the newspaper, shipping, oil and transportation industries, in each of which the same question had arisen. See Decision of National Labor Relations Board, reprinted at 20 a, n. 4 of the Petition. Indeed, Respondent Harrah's Club describes the case as "a typical and classical secondary boycott situation." *Brief for Respondent Harrah's Club in Opposition,* p. 6.

Respectfully submitted,

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